IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4859 OF 2004

M/s Golden Touch Development Pvt. Ltd. .... Petitioner

Vs.

Shri Sambhaji Kondiba Dhangekar.... Respondent

Ms. Manjiri S. Parasnis for the Petitioner
Mr. R.S. Apte for Respondent.

CORAM : A.P. DESHPANDE, J.
DATE : 26TH JULY, 2007

P.C.

1) Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2) The present Petitioner instituted a suit for specific performance of contract against the Respondent-defendant on 3rd October 1996. It is undisputed fact that from 15/4/1999 to 24/4/2002 i.e. for a period of three years, the suit has not come before the Court as the same was adjourned sine die, no dates were given and the papers were also missing. The defendant expired on 3rd January 2000. The learned Counsel for the defendant filed a pursis on 20th June, 2000 stating therein the

fact of death of the defendant on 3/1/2000. It is not the case of the defendant that a copy of the pursis was served on the Petitioner/Plaintiff or his Counsel. According to the Petitioner, as the suit was adjourned sine die for the period from 15/4/1999 to 24/4/2002, the Petitioner had no knowledge about the filing of the pursis and the death of the defendant. It was only when the case was taken up in the Court on 26th April 2002 that the Petitioner/Plaintiff came to know about the death of the defendant and immediately an application was moved for bringing the LRs of the defendant on record. Though in the said application, a prayer was made for bringing LRs on record, no prayer for condonation of delay or setting aside of abatement was made. On the legal advise, such an application seeking condonation of delay and setting aside abatement was filed on 26/8/2002 i.e. after a period of four months.

3) The Trial Court has categorically held that the file was missing since 15/4/1999 to 26/4/2002 and therefore accepted the Petitioner’s case that the Petitioner was not aware about the death of the defendant. However, the Trial Court found that the delay from 26/4/2002 to 27/8/2002 was not properly explained, it has rejected the application for

condonation of delay. It's a settled position in law that the litigant ought not to suffer on account of the mistake of the counsel. In the present case though the application was filed for bringing LRs on record on 26/4/2002, no prayer was made for condonation of delay and setting aside the abatement and hence another application was made on 26/8/2002. The property involved in the suit is valuable immovable property and value of which according to the agreement is Rs.40.00 Lacs at the time of entering into an agreement. It will not be out of place to mention that in the application filed by the Petitioner on 26/4/2002, a prayer was made to grant any other relief in the interest of justice.

4) The learned Counsel in the first place submits that the Trial Court has taken very pedantic approach in the matter of condonation of delay which has resulted in miscarriage of justice. Secondly he submitted that the Trial Court should have read the prayer for condonation of delay and setting aside the abatement as implicit in the application for bringing LRs on record. It is also submitted that the Respondent-defendant can be adequately compensated.

5) Perused the order passed by the Trial Court. The Trial Court has correctly recorded the finding that the Petitioner has shown sufficient causes for not filing the application from 15/4/1999 to 26/4/2002. However, it has erroneously held that the period from 26/4/2002 to 27/8/2002 has not been satisfactorily explained. I am of the clear view that the Trial Court has committed a patent illegality in refusing to condone the delay in filing the application for bringing LRs on record and for setting aside the abatement. In the interest of justice and to avoid miscarriage of justice, the impugned order dated 7/2/2003 needs to be quashed and set aside.

6) In the result, the Writ Petition is allowed. The impugned order dated 7/2/2003 passed by the Trial Court is quashed and set aside. The application for condonation of delay is allowed. The abatement of the suit is set aside. The Petitioner is permitted to bring the LRs of the deceased on record as claimed by it vide application dtd 26/4/2002. This order shall be subject to payment of costs of Rs.10,000/- by the Petitioner to the Respondent. The cost shall be deposited in the Trial Court within 4 weeks from today.

7) Rule is made absolute in above terms.

(A.P. DESHPANDE, J.)